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SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300

WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500

FACSIMILE (202) 424-7645

WWW.SWIDLAW.COM

NEW YORK OFFICE  
405 LEXINGTON AVENUE

NEW YORK, NY 10174

(212) 758-9500 FAX (212) 758-9526

May 22, 2001

VIA COURIER

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Attention: Deputy Chief, Common Carrier Bureau

Re: Petition for Waiver of Commission's Rules

Dear Ms. Salas:

Pacific Lightnet, Inc. ("Pacific Lightnet"), by its undersigned counsel, respectfully submits the attached Petition for a Limited Waiver of the Commission's authorization and verification requirements as found in 47 C.F.R. §§ 64.1000 through 64.1190 and the relevant Commission Orders to the extent necessary to permit the Petitioners to transfer customers of GST Telecom Hawaii, Inc. ("GST Hawaii") to Pacific Lightnet's customer base without first obtaining the customers' authorization and verification.

As explained in the Petition, Pacific Lightnet has entered into an agreement with GST Hawaii to acquire substantially all of GST Hawaii's assets in Hawaii. GST Hawaii is simultaneously filing a Section 63.71 Application to discontinue the provision of services after the transfer is completed. As demonstrated herein, Pacific Lightnet fully satisfies the special circumstances required for a waiver of the Commission's rules, as indicated in previous Commission Orders, and grant of the instant Petition will serve the public interest.

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Ms. Salas  
May 22, 2001  
Page 2

An original and four (4) copies of this letter and Petition are enclosed for filing with the Commission. Please date-stamp and return the enclosed extra copy of this filing in the envelope provided herein. Should you have any questions regarding this matter, please do not hesitate to contact Brian McDermott at (202) 295-8346.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Catherine Wang", with a stylized flourish at the end.

Catherine Wang  
Brian McDermott

Counsel for Pacific Lightnet, Inc.

Enclosures

cc: Bruce Becker (GST)  
Peter Mikkola (Pacific Lightnet)  
Nancy Spooner (Swidler)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 22 2001

In the Matter of )  
 )  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions )  
of the Telecommunications Act of 1996 )  
 )  
Pacific Lightnet, Inc. )  
Request for Waiver )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 94-129

**PETITION FOR WAIVER**

**I. Introduction**

Pacific Lightnet, Inc. ("Pacific Lightnet" or "Petitioner") respectfully requests a limited waiver of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190 and relevant Commission Orders applicable to the submission of changes in a subscriber's preferred carrier (collectively hereafter "Rules"). Specifically, Pacific Lightnet seeks a waiver to the extent necessary to permit it to transfer the customers of GST Telecom Hawaii, Inc. ("GST Hawaii"), to the Petitioner's customer base without first obtaining the customers' authorization and verification.<sup>1</sup>

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<sup>1</sup> The FCC's verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless the carrier has obtained either: (1) the subscriber's written letter of agency; (2) the subscriber's electronic verification via a toll-free telephone number used exclusively to verify subscriber carrier changes; or (3) the subscriber's oral authorization to submit the preferred carrier change order from an appropriately qualified independent third party that confirms and includes appropriate verification data -- e.g., the subscriber's date of birth or social security number. 47 C.F.R. § 64.1150.

As demonstrated herein, Petitioner fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in *WAIT Radio v. FCC*. Grant of the instant Petition therefore will serve the public interest.<sup>1</sup> Moreover, Petitioner's request for a waiver is substantially identical to waivers of these rules previously granted by the Commission to other carriers.<sup>2</sup>

## **II. Background**

On May 17, 2000, GST Telecommunications, Inc. and its subsidiaries (together "GST"), including GST Hawaii, filed for protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. District Court for the District of Delaware ("Bankruptcy Court"). Pursuant to an agreement to be executed with GST Hawaii, the parties intend to transfer customer accounts to the Petitioner.<sup>3</sup> Petitioner may migrate up to approximately 1,000 customers, representing more than 7,000 lines, from GST Hawaii to Petitioner. As stated above, GST Hawaii has filed for bankruptcy and plans to discontinue service. Granting this petition is necessary to ensure that GST Hawaii's current customers continue to receive service without interruption.

In accordance with the Commission's prior Orders in this docket, Petitioner will notify all of the affected GST Hawaii customers prior to their transfer to Petitioner, via a letter that states: (a) the customers will receive the same or better services and rates upon transfer to Pacific Lightnet; (b) they have the right to switch to the interexchange carrier of their choice; (c)

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<sup>1</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>2</sup> *See infra* note 6.

<sup>3</sup> On March 9, 2001, GST filed an Asset Purchase Agreement with the Bankruptcy Court seeking the Court's approval of the acquisition of all remaining GST Hawaii assets by TM Communications Hawaii LLC ("TM"). The Bankruptcy Court approved the Asset Purchase Agreement on March 22, 2001. Upon closing, all former GST Hawaii assets, including its customer base, will be transferred to TM's nominee, Pacific Lightnet.

Petitioner will reimburse a customer for any preferred interexchange carrier change charges incurred from the local exchange carrier (“LEC”) if a customer decides to change his or her preferred interstate carrier within 30 days from the transfer date; and (d) customers may contact Petitioner via a toll-free number with any questions regarding the transfer.<sup>4</sup> After consummation of the sale, Petitioner will send another notification letter welcoming customers to Petitioner and reiterating statements (a) through (d) above. Sample notification letters are attached as Exhibit A to this Request for Waiver of the Commission’s Rules.

### **III. Special Circumstances Exist to Grant the Instant Waiver Request**

The FCC has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *WAIT Radio* at 1159; *Northeast Cellular Telephone Co.* at 1166. The Petitioner asserts that special circumstances exist for waiver of 47 C.F.R. §§ 64.1100 through 64.1190. First, a waiver of these rules will enable customers to continue to receive the same services and the same or better rates from Petitioner without a possible disruption in service. In addition, requiring Petitioner to obtain verifications from each of these approximately 1,000 customers before it can begin to provide them service may delay the transfer to Petitioner, interrupt customers’ services, and preclude their ability to make interexchange and international calls.

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<sup>4</sup> See *infra* note 6.

Waiver of these rules will serve the public interest because all GST Hawaii customers switched to Petitioner will receive prior notification of the change in carriers, be informed of their ability to select the interexchange carrier of their choice, be reimbursed for any preferred carrier change charges imposed by LECs, and be given a toll-free number to contact Petitioner with any questions regarding the transition. Moreover, after customers are switched to Petitioner, they will receive a second letter again informing them of this information. These letters will ensure that customers are informed of the process and that their rights are adequately protected. By granting the transfer of these customers via notification as described in this Petition, the Commission will ensure that the underlying policy goals of the carrier change rules are served in an efficient manner that will permit Petitioner to seamlessly transfer GST Hawaii customers to Petitioner without any disruption in service.

Furthermore, the circumstances involved in the instant Petition are similar to those in which the Commission has previously found sufficient to justify a waiver of these rules for other carriers.<sup>1</sup> Where: (1) an interexchange carrier has entered into an agreement to purchase assets, including the customer base, from another interexchange carrier, and (2) the purchasing carrier has pledged to notify the customers of the change in providers, and (3) waiver of the Commission's authorization and verification rules would permit a smooth transition between providers, without a loss of service or rates, the Commission has consistently found that the

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<sup>1</sup> See Orders issued in *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, International Exchange Communications, Inc. Request for Waiver*, Order, CC Docket No. 94-129, granting waiver of the Commission's authorization and verification requirement to various carries, including US West Communications, Inc. (DA 00-1690, rel. July 28, 2000) and Telephone USA of Wisconsin, LLC (DA 00-1679, rel. July 28, 2000).

special circumstances exist warranting a waiver, and that grant of the waiver would serve the public interest.<sup>2</sup>

#### **IV. Conclusion**

Petitioner respectfully requests that the Commission grant a limited waiver of the authorization and verification requirements of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190, and relevant Orders to the extent necessary to permit the Petitioner to transfer customers of GST Hawaii to the Petitioner's customer base without first obtaining the customers' explicit authorization and verification. For the reasons stated herein, grant of this request for waiver of the Commission's Rules is in the public interest.

Respectfully Submitted,

**Pacific Lightnet, Inc.**

By: \_\_\_\_\_

Catherine Wang  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007-5116  
Telephone: (202) 424-7500  
Facsimile: (202) 424-7645

Counsel for Pacific Lightnet, Inc.

Date: May 22, 2001

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<sup>2</sup> See, e.g., *International Exchange Communications, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1549 (rel. Sept. 10, 1999); *MCI WorldCom, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1819 (rel. Aug. 6, 1999).

**EXHIBIT A**



## **Pacific Lightnet, Inc.**

### **NOTICE OF CHANGE IN TELECOMMUNICATIONS SERVICE PROVIDER**

#### **CURRENT DATE**

Dear Current GST Long Distance Customer:

Pacific Lightnet and GST are pleased to announce that as of **DATE**, GST's customers will begin receiving local and long distance service from Pacific Lightnet. Through an agreement between Pacific Lightnet and GST, Pacific Lightnet will begin providing long distance services to the customers of GST in Hawaii.

Please note the following important information:

1. Pacific Lightnet will provide you with the same high quality telecommunications services that you have been receiving from GST.
2. The local and long distance services will be provided at the same rates than you currently receive from GST.
3. In the event that you would prefer to use another company as your long distance carrier, you have the right to switch to a long distance carrier of your choice.
4. Pacific Lightnet will reimburse you for primary long distance carrier change charges if they are imposed by your local exchange carrier, such as Verizon Communications, in connection with the switch over to GST.
5. Pursuant to FCC rules, this letter also serves as notice that the FCC will normally authorize GST's proposed termination of telecommunications services unless it is shown that customers would be unable to receive service, or a reasonable substitute, from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object to GST ceasing to provide telecommunications service, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington DC 20554, referencing the section 63.71 Application of GST Telecommunications, Inc. Comments should include specific information about the impact of GST's ceasing of telecommunications services upon you or your company, including any inability to acquire reasonable substitute service.

Pacific Lightnet extends a special welcome to all GST customers. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call Pacific Lightnet at its toll-free customer service number, 1-800-\_\_\_\_\_, if you have any concerns or questions.

Sincerely,

Pacific Lightnet, Inc.

## **Pacific Lightnet, Inc.**

### **NOTICE OF CHANGE IN LONG DISTANCE SERVICE PROVIDER**

**CURRENT DATE**

Dear Valued Customer:

Pacific Lightnet is pleased to advise you that, as of **DATE**, you have begun receiving long distance service from Pacific Lightnet. Through an agreement between Pacific Lightnet and GST, Pacific Lightnet has begun providing long distance services to the customers of GST in Hawaii.

In order to make this transition as comfortable to you as possible, we would like you to be aware of the following important information:

1. Pacific Lightnet will provide you with the same high quality telecommunications services as GST did.
2. The long distance services will be provided at the same rates that you previously received from GST.
3. In the event that you would prefer to use another company as your long distance carrier, you have the right to switch to a long distance carrier of your choice.
4. If you decide to switch your service to another carrier within 30 days of the date this notice was mailed, Pacific Lightnet will reimburse you for any primary long distance carrier change charges imposed by your local exchange carrier for the switch during the 30 day period.

Pacific Lightnet extends a special welcome to all former GST customers. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call Pacific Lightnet at its toll-free customer service number, 1-800-\_\_\_\_\_, if you have any concerns or questions.

Sincerely,

*Pacific Lightnet, Inc.*